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ORIGINAL

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

FILED  
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NORTHERN DISTRICT OF CALIFORNIA  
CW

DAVID JOHNSON,  
Plaintiff,

CV 08-  
Case No. 08-  
Civil Rights

4112

v.

CHIU FAMILY, LLC,

COMPLAINT FOR PRELIMINARY AND  
PERMANENT INJUNCTIVE RELIEF AND  
DAMAGES: DENIAL OF CIVIL RIGHTS AND  
PUBLIC FACILITIES TO PHYSICALLY  
DISABLED PERSONS (CIVIL CODE §§ 54,  
54.1 AND 55; INJUNCTIVE RELIEF PER  
TITLE III, AMERICANS WITH DISABILITIES  
ACT OF 1990

Defendants.

Plaintiff, David Johnson, alleges:

FIRST CLAIM FOR RELIEF: DAMAGES AND INJUNCTIVE RELIEF  
FOR DENIAL OF FULL AND EQUAL ACCESS TO A PUBLIC ACCOMMODATION:  
PUBLIC FACILITIES AT A SHOPPING CENTER and RESTAURANT (Civil Code §§ 51,  
54.1)

1. Plaintiff is a C5/6 quadriplegic as the result of an accident. He does not have the use of his legs, and has limited use of his hands, and is a "person with a disability" and "physically handicapped person". Plaintiff requires the use of a wheelchair for locomotion and is either

1 unable to use portions of public facilities which are not accessible to disabled persons who  
2 require the use of a wheelchair or is only able to use such portions with undue difficulty.

3 2. The shopping center located at 2710 - 3330 Delta Fair Blvd., Antioch, California (the  
4 Center), is shopping center which is open to the public. The "Lin's Buffett" restaurant located  
5 at 2730 Delta Fair Blvd., Antioch, California (the Restaurant) is a restaurant within the Center.  
6 Defendant owns the real property where the Center is located.

7 3. Summary of facts: This case involves the denial of access to Plaintiff and others similarly  
8 situated at the Center January 23, May 18 and August 1, 2008 (the Dates). Plaintiff was denied  
9 equal protection of the law and was denied Civil Rights under both California law and federal  
10 law, as hereinbelow described. Plaintiff was denied his rights to full and equal access at the  
11 Center because of an inaccessible parking lot, and in addition, on August 1, 2008, an  
12 inaccessible restroom at the Restaurant, all of which made the Center and Restaurant not  
13 properly accessible to Plaintiff and to others similarly situated. Plaintiff seeks injunctive relief  
14 to require Defendants to make the Center's parking lot and the Restaurant's restroom  
15 accessible, to comply with ADAAG and the CBC where required, to remove all barriers to  
16 access in the Center and the Restaurant which are readily achievable to remove, to make all  
17 reasonable accommodations in policy in order to enable Plaintiff and others similarly situated to  
18 use the Center and Restaurant and at minimum, to use readily achievable alternative methods to  
19 enable Plaintiff to use the goods and services which the Center and Restaurant make available  
20 to the non-disabled public. Plaintiff also seeks the recovery of damages for his personal  
21 damages involved in the discriminatory experiences on the Dates, and seeks recovery of  
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1 reasonable attorney's fees and litigation expenses and costs according to statute.

2 4. Jurisdiction: This Court has jurisdiction of this action pursuant to 28 USC § 1331 for  
3 violations of the Americans with Disabilities Act of 1990, 42 USC 12101 et seq. Pursuant to  
4 supplemental jurisdiction, attendant and related causes of action arising from the same facts are  
5 also brought under California law, including but not limited to violations of California Civil  
6 Code §§ 51, 54, 54.1 and 55.

7 5. Venue: Venue is proper in this Court pursuant to 28 USC 1391(b) and is founded on the fact  
8 that the location where Plaintiff experienced his discrimination is located in this district and  
9 that Plaintiff's causes of action arose in this district.

10 6. Intradistrict: This case should be assigned to the San Francisco intradistrict because the  
11 incident occurred in, and Plaintiff's rights arose in, the San Francisco intradistrict.

12 7. Each of the Center and Restaurant is a "public accommodation or facility" subject to the  
13 requirements of California Civil Code § 51, 54, 54.1 and 55.

14 8. Placeholder.

15 9. Defendant is and was the owner, operator, manager, lessor and lessee of the subject Center  
16 at all times relevant herein. Plaintiff is informed and believes that each of the Defendants is  
17 and was the agent, employee or representative of each of the other Defendants, and performed  
18 all acts and omissions stated herein within the scope of such agency or employment or  
19 representative capacity and is responsible in some manner for the acts and omissions of the  
20 other Defendants in proximately causing the damages complained of herein.

21 10. Plaintiff and others similarly situated are disabled persons who require the use of a  
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1 wheelchair and are unable to use public facilities on a “full and equal” basis unless each such  
2 facility is in compliance with the provisions of the Americans with Disabilities Act of 1990 and  
3 the regulations thereof. Under Civil Code §§ 51 and 54.1, Defendants were required to comply  
4 with the requirements of the Americans with Disabilities Act of 1990 and the federal  
5 regulations adopted pursuant thereto. The acts and omissions of which Plaintiff complains took  
6 place at the Center and Restaurant.

7 11. Civil Code §§ 51 and 54, et seq., were enacted to prohibit discrimination against people  
8 with disabilities and to encourage the full and free use by people with disabilities of public  
9 facilities and other public places. CC §§ 51 and 54(c) state that a violation of the Americans  
10 with Disabilities Act of 1990 is a “violation of this section”; CC § 54.1(a) states that  
11 individuals with disabilities are entitled to “full and equal access” to public accommodations  
12 and that such access means that which meets the standards of Titles II and III of the Americans  
13 with Disabilities Act of 1990 and federal regulations adopted pursuant thereto; CC § 52 states  
14 that minimum damages for discrimination are \$4,000 for each incidence of discrimination; CC  
15 § 54.3 states that minimum damages for discrimination are \$1,000; CC § 54.3 states that a  
16 defendant who denies or interferes with a disabled person’s rights of access is liable for actual  
17 damages and attorneys’ fees.

18 12. Health & Safety Code § 19955 was enacted “To ensure that public accommodations or  
19 facilities constructed in this state with private funds adhere to provisions of Chapter 7  
20 (commencing with § 4450) of Division 5 of Title 1 of the Government Code.” Such public  
21 accommodations include those which are the subject of this action. On information and belief,  
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1 Title 24 California Code of Regulations, formerly known as the California Administrative  
2 Code, was in effect at the time of construction and of each alteration of work, all of which  
3 occurred after July 1, 1982, thus requiring access complying with the specifications of title 24  
4 for all such construction and for each such "alteration, structural repair or addition".

5 13. The Center's parking lot is inaccessible to people in wheelchairs, due to the presence of  
6 built-up curb ramps in the access aisles of nearly all of its purportedly accessible parking  
7 spaces. The Restaurant's men's restroom is inaccessible to people in wheelchairs.

8 On each of the Dates, Plaintiff patronized stores in the Center, and was subjected to  
9 access aisles for the accessible parking spaces which were not level. On August 1, 2008,  
10 Plaintiff had a meal at the Restaurant, and had a more difficult time using it than he should have  
11 had..

12 As a result, Plaintiff was embarrassed and humiliated in an amount according to proof.  
13 14. Defendant's failure to create an accessible parking lot in the Center and men's restroom in  
14 the Restaurant, remove all readily achievable barriers, institute policies in furtherance of  
15 accessibility or at least have an alternate policy to enable Plaintiff to use the goods and services  
16 offered to the non-disabled public without having to suffer the indignities, as aforesaid, was a  
17 violation of the California Building Code, the Americans with Disabilities Act and federal  
18 regulations adopted pursuant thereto, and as a consequence, was a violation of Civil Code §§ 51  
19 and 54, et seq.

20 15. Injunctive relief: Plaintiff seeks injunctive relief to prohibit the acts and omissions by  
21 Defendant at the Center and Restaurant as stated above which appear to be continuing, and  
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1 which have the effect of wrongfully excluding Plaintiff and others similarly situated from using  
2 the Center and Restaurant. Plaintiff continues to patronize the Center, and will patronize the  
3 Center and Restaurant again once the barriers are removed. Such acts and omissions are the  
4 cause of humiliation and inconvenience of Plaintiff in that these actions continue to treat  
5 Plaintiff as an inferior and second class citizen and serve to discriminate against Plaintiff on the  
6 sole basis that Plaintiff is a person with a disability and requires the use of a wheelchair for  
7 movement in public places. Plaintiff is unable so long as such acts and omissions of Defendant  
8 continue, to achieve equal access to and use of this public facility. The acts of Defendant have  
9 proximately caused and will continue to cause irreparable injury to Plaintiff if not enjoined by  
10 this Court.

11 16. Damages: As a result of the denial of equal access to the Center and Restaurant and due to  
12 the acts and omissions of Defendants and each of them in owning, operating and/or leasing the  
13 Center and Restaurant, Plaintiff suffered a violation of Civil Rights including but not limited to  
14 rights under Civil Code §§ 51, 54 and 54.1, and suffered mental and emotional distress, all to  
15 Plaintiff's damages. Defendant's actions and omissions to act constituted discrimination  
16 against Plaintiff on the sole basis that Plaintiff was physically disabled and unable to use the  
17 facilities on a full and equal basis as other persons. Plaintiff seeks actual damages, the  
18 minimum per occurrence damages of \$4,000 pursuant to CC § 52, and \$1,000 pursuant to CC §  
19 54.3. Plaintiff also seeks trebling of all of the actual damages as provided by Civil Code § 54.3.

20 17. Fees and costs: As a result of Defendant's acts, omissions and conduct, Plaintiff has been  
21 required to incur attorney's fees, litigation expenses, and costs as provided by statute, in order  
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1 to enforce Plaintiff's rights and to enforce provisions of the law protecting access for disabled  
 2 persons and prohibiting discrimination against disabled persons. Plaintiff therefore seeks  
 3 recovery of all reasonable attorney's fees and costs, pursuant to the provisions of Civil Code §§  
 4 52 and 54.3. Additionally, Plaintiff's lawsuit is intended not only to obtain compensation for  
 5 damages to Plaintiff, but also to force the Defendants to make their facilities accessible to all  
 6 disabled members of the public, justifying "public interest" attorney's fees, litigation expenses  
 7 and costs pursuant to Code of Civil Procedure § 1021.5.

8 18. Wherefore, Plaintiff asks this Court to preliminarily and permanently enjoin any continuing  
 9 refusal by Defendants to comply with the requirements of the Americans with Disabilities Act  
 10 of 1990 and regulations adopted pursuant thereto with respect to access of disabled persons to  
 11 the Center and the Restaurant; for statutory damages pursuant to CC § 52; for actual and treble  
 12 damages pursuant to CC § 54.3 and for attorneys' fees and costs pursuant to CC §§ 52, 54.3 and  
 13 1021.5.

14  
 15 SECOND CLAIM FOR RELIEF:  
 VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990  
 42 USC §§ 12101 FF

16 19. Plaintiff realleges the allegations of paragraphs 1-18 hereof.

17 20. Pursuant to law, in 1990 the United States Congress made findings per 42 USC §12101  
 18 regarding physically disabled persons, finding that laws were needed to more fully protect  
 19 "some 43 million Americans [with] one or more physical or mental disabilities"; that  
 20 "historically society has tended to isolate and segregate individuals with disabilities"; and that  
 21 "such forms of discrimination against individuals with disabilities continue to be a serious and  
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pervasive social problem"; that "the Nation's proper goals regarding individuals with disabilities are to assure equality of opportunity, full participation, independent living and economic self sufficiency for such individuals"; and that "the continuing existence of unfair and unnecessary discrimination and prejudice denies people with disabilities the opportunity to compete on an equal basis and to pursue those opportunities for which our free society is justifiably famous ..."

21. Congress stated as its purpose in passing the Americans with Disabilities Act (42 USC §12101(b)):

It is the purpose of this act

(1) to provide a clear and comprehensive national mandate for the elimination of discrimination against individuals with disabilities;

(2) to provide clear, strong, consistent, ***enforceable standards*** addressing discrimination against individuals with disabilities;

(3) to ensure that the Federal government plays a central role in enforcing the standards established in this act on behalf of individuals with disabilities; and

(4) to invoke the sweep of Congressional authority, including the power to enforce the 14th Amendment and to regulate commerce, in order to address the major areas of ***discrimination faced day to day*** by people with disabilities (emphasis added).

22. As part of the Americans with Disabilities Act, Public Law 101-336 (hereinafter the "ADA"), Congress passed "Title III - Public Accommodations and Services Operated by Private Entities" (42 USC 12181 ff). Among "private entities" which are considered "public accommodations" for purposes of this Title are a shopping center and a restaurant (Regulation 36.104).

23. Pursuant to §302, 42 USC §12182, "No individual shall be discriminated against on the basis of disability in the full and equal enjoyment of the goods, services, facilities, privileges,



1 advantages or accommodations of any place of public accommodation by any person who  
 2 owns, leases or leases to, or operates a place of public accommodation."

3 24. Among the specific prohibitions against discrimination were included:

4 ***§12182(b)(2)(A)(ii)***: "A failure to make reasonable modifications in policies, practices or  
 5 procedures when such modifications are necessary to afford such goods, services, facilities,  
 6 privileges, advantages or accommodations to individuals with disabilities ...";

7 ***§12182(b)(A)(iii)***: "a failure to take such steps as may be necessary to ensure that no individual  
 8 with a disability is excluded, denied service, segregated, or otherwise treated differently than  
 9 other individuals because of the absence of auxiliary aids and services ..."; ***§12182(b)(A)(iv)***:

10 "A failure to remove architectural barriers and communication barriers that are structural in  
 11 nature, in existing facilities ... where such removal is readily achievable"; ***§12182(b)(A)(v)***:

12 "Where an entity can demonstrate that the removal of a barrier under clause (iv) is not readily  
 13 achievable, a failure to make such goods, services, facilities, privileges, advantages, or  
 14 accommodations available through alternative methods if such methods are readily achievable".

15 The acts and omissions of Defendants set forth herein were in violation of Plaintiff's rights  
 16 under the ADA, Public Law 101-336, and the regulations promulgated thereunder, 28 CFR Part  
 17 36ff.

18 25. The removal of each of the barriers complained of by Plaintiff as hereinabove alleged, were  
 19 at all times herein mentioned "readily achievable" under the standards of the Americans With  
 20 Disabilities Act. Because the Center and Restaurant were not accessible, Defendants had an  
 21 obligation to have some sort of plan which would have allowed Plaintiff to enjoy the Center's  
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1 and Restaurant's services without having to suffer the indignities as aforesaid.

2 26. Pursuant to the Americans with Disabilities Act, 42 USC 12188ff, §308, Plaintiff is  
3 entitled to the remedies and procedures set forth in §204(a) of the Civil Rights Act of 1964, 42  
4 USC 2000(a)-3(a), as Plaintiff is being subjected to discrimination on the basis of disability in  
5 violation of this Title or has reasonable grounds for believing that he is about to be subjected to  
6 discrimination in violation of §12182. On information and belief, Defendants have continued  
7 to violate the law and deny the rights of Plaintiff and of other disabled persons to access this  
8 public accommodation since on or before July 15, 2008. Pursuant to §12188(a)(2), "In cases of  
9 violations of §12182(b)(2)(A)(iv) ... injunctive relief shall include an order to alter facilities to  
10 make such facilities readily accessible to and usable by individuals with disabilities to the  
11 extent required by this title."

12 27. Plaintiff seeks relief pursuant to remedies set forth in §204(a) of the Civil Rights Act of  
13 1964, (42 USC 2000(a)-3(a), and pursuant to Federal Regulations adopted to implement the  
14 Americans with Disabilities Act of 1990. Plaintiff is a person for purposes of Section 12188(a)  
15 of the ADA who is being subjected to discrimination on the basis of disability in violation of  
16 Title III and who has reasonable grounds for believing he will be subjected to such  
17 discrimination each time that he may attempt to patronize the Center and/or Restaurant.

18 Wherefore Plaintiff prays for relief as hereinafter stated:

19 PRAYER

20 1. Issue a preliminary and permanent injunction directing Defendants to modify its  
21 facilities as required by law to comply with the ADAAG and the CBC where required, remove  
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1 all barriers where it is readily achievable to do so, institute policies in furtherance of  
2 accessibility or at least have an alternate policy to enable Plaintiff to use the goods and services  
3 offered to the non-disabled public so that it provides adequate access to all citizens, including  
4 persons with disabilities; and issue a preliminary and permanent injunction directing  
5 Defendants to maintain its facilities usable by plaintiff and similarly situated persons with  
6 disabilities in compliance with federal regulations, and which provide full and equal access, as  
7 required by law;

8 2. Retain jurisdiction over the Defendants until such time as the Court is satisfied that  
9 Defendants' unlawful policies, practices, acts and omissions, and maintenance of inaccessible  
10 public facilities as complained of herein no longer occur, and will not recur;

11 3. Award to Plaintiff all appropriate statutory damages;

12 4. Award to Plaintiff all reasonable attorneys' fees, all litigation expenses, and all costs  
13 of this proceeding as provided by law; and

14 5. Grant such other and further relief as this Court may deem just and proper.

15 Date: August 27, 2008

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18 S/Thomas N. Stewart, III  
19 Attorney for Plaintiff  
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